

The following are some specific comments, pertaining to the aquifer exemption criteria in 40 C.F.R. §146.04, to consider when reviewing an application for an aquifer exemption

1. 40 C.F.R. § 146.04(a)  
The present use of a USDW as a drinking water supply for humans or any use which may prevent endangerment of human health precludes the exemption of the aquifer.
2. 40 C.F.R. § 146.04(b)  
The fact that a USDW is not currently being used as a source of drinking water does not qualify it for an aquifer exemption unless it meets one of the specific criteria listed.
3. 40 C.F.R. § 146.04(b)(1)  
The fact that a USDW can be demonstrated to contain producible amounts of minerals, hydrocarbons, or geothermal energy qualifies it for a possible aquifer exemption.
4. 40 C.F.R. § 146.04(b)(2)  
What constitutes an economically or technologically impractical depth and location of a USDW is subjective in an aquifer exemption request determination. In Region IX, water has been drilled for successfully at depths in excess of 3000 feet. Using this criterion for granting an aquifer exemption should only be used in extreme cases.
5. 40 C.F.R. § 146.04(b)(3)  
This condition was placed in the regulations for cases where there may have been contamination of a USDW by injection wells prior to the promulgation of the UIC regulations. The Regional policy is not to use this criterion for wells that have been operating in violation of the UIC regulations. These injection wells are to be subjected to enforcement, not aquifer exemptions.
6. 40 C.F.R. § 146.04(b)(4)  
Class III projects typically require aquifer exemptions due to the nature of the mining project. Since there are few Class III wells in Region IX, this type of aquifer exemption request may be less common than for Class I or II operations.
7. 40 C.F.R. § 146.04(c)  
This regulation implies that no USDW with TDS less than 3000 mg/l is eligible for an aquifer exemption unless it meets one of the criteria in 40 C.F.R. § 146.04(b).

#### V. Level of Justification

In approving an aquifer exemption request, the most significant portion of the task is in defining the aquifer, delineating its boundaries (including confining zones), and justifying the need for the exemption. A guide to the evidence needed is outlined in the following checklist.

This Check List is provided solely for use as an aid in the preparation and review of aquifer exemption requests. Refer to 40 CFR 144.7 for General Provisions, and 40 CFR 146.04 for Criteria and Standards applicable to aquifer exemptions.

Data and other evidence which are used to support the aquifer exemption request must be included with the application.

Economic analyses shall be done in a precise, detailed and representative manner.

Maps required for the aquifer exemption application are in addition to any maps required in other applications (e.g., Class I or II permit applications). Other information required for the